

LOCAL GOVERNMENT

# BULLETIN 44

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## THE PROVINCIAL OFFENCES ACT, 1979

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Ontario Ministry of Intergovernmental Affairs

Hon. Thomas L. Wells  
Minister

D. W. Stevenson  
Deputy Minister

Municipal Operations Division  
Municipal Administration Branch

January, 1981

To the Municipal Clerk:

Please circulate this bulletin or make copies for distribution to councillors or staff of your municipality who may be interested in the subject. Additional copies are available at a dollar each from the Publications Centre (see page 21).

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STATE OF NEW YORK

IN SENATE

January 11, 1901.

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION

PASSED BY THE SENATE

ON JANUARY 11, 1901.

ALBANY:

J. B. LEECH, PRINTERS.

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## INTRODUCTION

The prosecution of by-law offences is of major interest to the councils and staff of municipalities. Recently the legislature took positive steps with the enactment of **The Provincial Offences Act, 1979**, to improve the procedures involved in prosecuting provincial offences, including municipal by-laws.

This bulletin, which is largely based on material provided by the Ministry of the Attorney General, takes a look at the highlights of **The Provincial Offences Act, 1979** from a municipal—by-law enforcement point of view and will be of particular interest to the staff of those municipalities that do their own by-law enforcement, as opposed to those that rely on the police department. A municipality must decide whether or not it wants to avail itself of the new streamlined procedure now available. This bulletin should assist in reaching a decision by explaining the processes involved.

This bulletin should be read in conjunction with a copy of **The Provincial Offences Act, 1979**, as the bulletin does not attempt to repeat the detailed procedures that are set out in the Act itself.

Many municipalities are arranging in-house discussions between their legal advisers and their by-law enforcement personnel in order to review the details of the Act and its particular consequence on their processes. This is likely the most effective way to assess the impact of **The Provincial Offences Act, 1979** on an individual municipality.

Copies of the Act, at a cost of 35 cents, may be obtained from:

In Person: The Ontario Government Bookstore  
880 Bay Street  
Toronto, Ontario  
M7A 1N8

By Mail (Prepaid): The Publications Centre  
Ministry of Government Services  
5th Floor  
880 Bay Street  
Toronto, Ontario  
M7A 1N8

Cheques should be made payable to the Treasurer of Ontario.

### EFFECTIVE DATE

The Provincial Offences Act, 1979 was given third reading March 27, 1979 and received Royal Assent on March 29, 1979.

Section 149 provides that the Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Accordingly, the Act came into force on March 31, 1980 with the exception of Part II (Parking Offences), which is not yet in force.

### APPLICATION

Prior to March 31, 1980, the prosecution of municipal by-law offences was governed by the provisions of **The Summary Convictions Act**. Section 147 of The Provincial Offences Act, 1979 states that, as of the date that the Act is proclaimed, **The Summary Convictions Act** is repealed. Therefore, after March 30, 1980, except for parking infractions, all offences that are charged must be dealt with in accordance with the new Act. **The Summary Convictions Act** will continue to apply to all proceedings that were commenced before that date, as well as to parking infractions, since Part II, which deals with parking infractions, will not come into force until a later date. By virtue of section 148, any reference to **The Summary Convictions Act** in any Act, regulation, or by-law will be deemed to be a reference to The Provincial Offences Act, 1979 after it has been proclaimed. There is no need for a municipality to amend any of its existing by-laws to change references from the **The Summary Convictions Act** to The Provincial Offences Act, 1979.

## PURPOSE

The Provincial Offences Act, 1979, was enacted to remedy a number of procedural problems that arose because provincial offences, including municipal-by-law infractions, were prosecuted under a code of procedure adopted by reference to the Criminal Code. Although the adopted procedure was the less rigid and formal of the two systems established in the Code, it was still full of formalism and rigid technicalities that were inappropriate for the 90% of provincial offences that are of a minor or regulatory nature.

The Act creates a clear procedural code to simplify procedures, eliminate technicalities, and remove the obstacle of delay from the enforcement of by-laws, the assertion of rights, and the speedy conclusion of prosecutions. The Act also encourages effective civil enforcement of fines, instead of the cumbersome and expensive procedure of jail in default of payment; but retains jail as the final sanction for the tiny percentage of offenders who wilfully avoid payment.

The Act creates two procedural streams, one commenced by a certificate of offence (Part I), the other commenced by an information under Part III. The former procedure is simpler and can be applied to most offences for which a relatively small fine is provided. In fact, the maximum set fine permitted under Part I is \$300.00. However, it is unlikely that a set fine would be established at that amount. The more formal procedure under Part III (as discussed in more detail later in this bulletin) applies where the complainant swears an information, and a summons or warrant is used to bring the defendant before the court. It is expected that this procedure will be used for more serious offences where the fine being sought exceeds \$300.00.

Along with the enactment of The Provincial Offences Act, 1979, the legislature has amended **The Provincial Courts Act**, thereby creating a new court called the Provincial Offences Court. It hears and determines trials of all municipal by-laws, except a limited number of offences that are tried in family court.

In many centres, there is a physical separation of the Provincial Offences Court from the Provincial Court (Criminal Division), in which trials of provincial offences were held on mixed dockets together with criminal trials. The anticipated long-term result is the creation of an atmosphere in the Provincial Offences Court that is more informal and less legalistic than that of the criminal court.

The distinction between the trials of provincial offences and criminal offences is expected to encourage an atmosphere in which the former can be treated with much less rigidity and formality than trials of criminal offences. It is hoped that everyone involved in the trials of provincial offences -- judges, justices of peace, defendants, counsel, agents, court personnel, police officers, and by-law-enforcement personnel -- will pick up this distinction, and reflect it in their approach to provincial offences.

## CONSTRUCTION OF THE ACT

The Act is structured with nine parts.

- I Commencement of Proceedings by Certificate of Offence (sections 3-13)
- II Commencement of Proceedings for Parking Infractions (sections 14-21)
- III Commencement of Proceeding by Information (sections 22-28)
- IV Trial and Sentencing (sections 29-75)
- V General Provisions (sections 76-91)
- VI Appeals and Review (sections 92-126)
- VII Arrest, Bail and Search Warrants (sections 127-144)
- VIII Orders on Application Under Statute (section 145)
- IX Commencement of Transition (sections 146-150)

This lay-out makes it relatively easy for the by-law-enforcement personnel to follow the necessary procedures for commencing an action under Part I or Part III to conclusion.

## CONTINUATION OF EXISTING PROCEDURES

Before March 31, 1980, most by-law offences were prosecuted under a procedure that required the by-law-enforcement personnel to swear an information before a justice of the peace. Subsequently, a summons requiring the accused to appear before the court was issued by the justice and served either by mail or personally.

Under Part III of the new Act, there are two ways of proceeding:

- A. By laying an information before a justice of the peace who, if satisfied, will issue a summons. (This is basically a continuation of the process followed previously under **The Summary Convictions Act.**)
- B. By issuing a summons on the spot and then returning to lay an information before a justice of the peace who, if satisfied, will confirm the summons issued.

The forms of information and summons will change slightly and it will be necessary for the by-law-enforcement staff to obtain the new forms from the local Provincial Offences Court Office.

The option under Part III to issue, on the spot, a summons to appear in court and then go before a justice of peace and swear an information is advantageous in a situation where it may be difficult to serve a summons if the by-law-enforcement personnel had to leave the scene of the offence and go before a justice of the peace and swear an information and then try to serve a summons -- say on a truck driver illegally dumping refuse.

The form of summons to be used in this situation, however, is very similar in size to that of the notice of offence used under Part I. There is very limited space available to set out the charge and it may be that abbreviated wording will be required to ensure that the defendant is adequately advised of the nature of the charge against him in accordance with the conditions set out in section 26 of the Act.

## NEW SIMPLIFIED PROCEDURES INTRODUCED

While the Act provides, in Part III, for a continuation of the information-and-summons procedures previously used by by-law-enforcement officers, it also introduces new procedures designed to simplify the process of bringing offenders to justice.

Under Part I of the Act, there are two options open to the by-law-enforcement personnel.

First, the by-law-enforcement personnel can issue an offence notice (ticket) where set fines and abbreviated wordings have been established.

Second, where no set fine is established, a summons may be issued on the spot.

These new procedures are set out in Part I of the Act. It provides that a police officer or provincial-offences Officer may issue an offence notice or summons in prescribed form.

**ALL PERSONS EMPLOYED BY A MUNICIPALITY FOR THE PURPOSES OF BY-LAW ENFORCEMENT ARE DESIGNATED PROVINCIAL-OFFENCES OFFICERS IN ACCORDANCE WITH SUBSECTION (2) OF SECTION 1 OF THE ACT, WHICH STATES:**

"1 (2) A minister of the crown may designate in writing any person or class of persons as a provincial offences officer for the purpose of all or any class of offences."

The procedures set out relating to the issuance of notices of offence under Part I are only available to police officers and provincial-offences officers. As well, the personal service of a summons under Part III can only be carried out by a police officer or provincial-offences officer, although any person may lay an information under Part III.

The certificate-of-offence forms are available from all local court offices and include detailed instructions on how to complete and distribute them.

It is anticipated that municipalities will want to use this 'ticket' and out-of-court fine-payment procedure for those offences that are of a minor nature and have a relatively high volume, such as dogs running at large.

Also of benefit in this new procedure is that a by-law-enforcement officer may issue an offence notice (where

a set fine exists) or summons on the spot. As already indicated, sometimes it is difficult to serve an offender, such as the driver of a vehicle dumping refuse illegally.

The offence notice allows the defendant to take one of three options. He may plead guilty and pay a set fine out of court, plead guilty and make representation before a justice of the peace for a reduction in the set fine or ask for a date to be set for a full trial.

This process of payment out of court or pleading guilty with an explanation should drastically reduce the amount of time spent by by-law-enforcement personnel waiting in court.

They will be required to attend court only when a defendant has indicated that he wants to proceed with a full trial.

However, before proceeding under Part I, the by-law-enforcement officer must determine if the fine sought should exceed \$300.00 because any penalty imposed under Part I procedures is limited to the set fine under the offence notice, or \$300.00, if the Part I summons is used. This amount usually covers the fines assessed for most minor by-law infractions. Likely it would take a very serious offence before it would be necessary for the by-law-enforcement officer to use Part III over the generally simpler process of Part I.

## SET FINES AND SHORT FORM OF WORDINGS

The use by provincial-offences officers (as already pointed out, all municipal by-law-enforcement personnel are provincial-offences officers) of a certificate of offence under Part I is permissible only when two conditions have been met.

First, there must be an appropriate short form of wording for each offence for which an out-of-court settlement is appropriate. These short forms of wordings will not be established by regulation. Therefore, the short form of wordings must conform to the requirements of section 13(3) of the Act; in other words, the wordings should be drafted to be sufficient to comply with the provisions of section 26 of the Act.

Second, there must be a set fine for each of those offences. This fine will be set by the Chief Judge of the Provincial court (Criminal Division) upon application.

### Establishment of Short Form of Wordings

To facilitate the process of preparing and forwarding the short form of wordings to the Chief Judge, the following procedure is suggested:

1. Attached as Appendix I is a draft of the format which should be used when forwarding your short form of wordings. You will note that there are three examples:
  - (a) a set of municipal by-laws relating to zoning infractions and animal-related infractions;
  - (b) a set of municipal by-laws relating to motor-vehicle infractions;
  - (c) a set of provincial offences where a municipality has the authority to prosecute.
2. The draft format is not exhaustive of the by-laws which you may wish to propose for set fines. The draft format is presented for the convenience of listing your proposed wordings.

3. Put on a separate piece of paper, as suggested in Appendix I, the by-law number and title, and list on that page the offence or offences as follows:
  - (a) under column 1, the proposed short form of wordings for the offence;
  - (b) under column 2, list the number of the section and subsection of the by-law which contains the offence; and,
  - (c) under column 3, there should be no notation. The Office of the Chief Judge will put the set fine in that space.
4. On a separate form, as shown on Appendix II, indicate the set fine that you request for each offence. Do not put the suggested fine on the format suggested in Appendix I.
5. Enclose a certified copy of your by-law.
6. Forward the materials to:

Mr. David Hunter  
Executive Coordinator  
Provincial Offences Act  
Implementation  
Ministry of the Attorney General  
18 King Street East  
3rd Floor  
Toronto, Ontario  
M5C 1C5

Upon receipt of your material, the Attorney General's staff will contact your office to review any problems that may arise.

#### Procedure to Obtain Set Fine

As indicated previously, set fines are designed for high-volume minor offences for which a fine payable out of court is an appropriate penalty. These fines are set by the Chief Judge of the Provincial Court (Criminal Division). Obviously the Chief Judge is not able to review all the by-laws in force in Ontario with a view to

selecting those for which a set fine is appropriate. The selection of appropriate by-laws is initially the responsibility of the municipality and, when these are submitted to the Chief Judge, he will decide whether a set fine is appropriate and, if so, the amount of the fine.

The municipality, after it has selected by-laws for which it requires set fines, must present them to the Chief Judge in the form of schedules setting out: the by-law number, the section creating the offence, the form of words intended to be used to describe the offence, and (on a separate schedule) the suggested set fine. Certified copies of these by-laws must be included with the schedules.

In suggesting a set fine, the municipality should consider the following:

- (1) the seriousness of the conduct in question;
- (2) the previous fines set for payment out of court under **The Summary Convictions Act** for that municipality and other municipalities;
- (3) the fines presently imposed in court for prosecutions under the same or similar by-laws, as well as fines imposed for similar conduct prosecuted under the provincial statutes or the Criminal Code (e.g., causing a disturbance by shouting).

If a municipality wishes to suggest a set fine that is higher than might normally be expected, it should set out the reasons therefor in a covering letter.

The requirement of including the intended short form of wordings serves several purposes.

- (1) It indicates a serious intention on the part of the municipality to use offence-notice procedures.
- (2) The short form of wordings will assist the Chief Judge in quickly assessing the nature of the conduct that is being regulated and for which it is suggested that a set fine is appropriate.
- (3) The short form of wordings helps identify the specific offence to which a set fine applies. Some sections of some by-laws

create two offences. The short form of wordings will assist the Chief Judge in satisfying himself that when he sets a fine it applies unambiguously to a specific offence and thereby complies with The Provincial Offences Act, 1979. The final decision as to whether a section is duplicitous (technically the incorrect use of two or more distinct offences) lies with the trial court.

- (4) For convenience of handling, the notices of offence (tickets) are relatively small and the space for describing the offence is limited.

It is important to note one of the purposes that is not served by inclusion of the short form of wordings in the schedules. Pursuant to The Provincial Offences Act, 1979, the Chief Judge has power to set fines. This power should not be confused with the power of the Lieutenant Governor in Council to make regulations providing for a form of words to designate an offence -- s. 13(1) (b). There will be no regulations designating a short form of wording to describe offences for the purposes of prosecutions of by-laws under Part I of the Act. The governing provision is s. 13(3):

"Where the regulations do not authorize the use of a word or expression to describe an offence in a form prescribed under clause (a) of subsection 1, the offence may be described in accordance with section 26."

The question of whether the description of an offence complies with s. 26 is a question for the justice dealing with a particular charge at trial or examining the certificate of offence under s. 9. Therefore, notwithstanding that the set fine will appear beside the short form of wording, it does not mean that the Chief Judge has passed on the sufficiency of the wording. The responsibility for drafting wordings that comply with s. 26 is that of the municipality. The materials will then be forwarded to the Chief Judge by the Attorney General's staff.

## TRIALS

As stated previously, the Act places emphasis on making the whole process less formal and more efficient and places high priority in the collection of fines as opposed to imposing costly (to the taxpayer) jail sentences.

The Provincial Offences Courts that have been established to handle matters being tried under The Provincial Offences Act, 1979 will ordinarily be presided over by justices of the peace.

There are some variances from the previous court procedures. By-law-enforcement personnel will want to review the sections of the Act dealing with the trial. If any questions arise, they should consult with the municipal solicitors or perhaps the local Crown Attorney.

## COLLECTING FINES

Obtaining a conviction for by-law offences is a deterrent only when the penalty imposed is enforceable. The Act stresses the imposition of fines for all but the most serious offences. The mechanism for the collection of these fines is set out in sections 67-71 of the Act.

It is expected that the new procedures will result in more fines being collected than in the past and as a result fewer people will be tempted to ignore the payment of their fines.

## FORMS

It will be necessary for by-law-enforcement personnel to make use of the new forms prescribed under the Act. Copies are available from local Provincial Court offices.

APPENDIX I

CITY OF		BY-LAW 12345: TITLE:	
ITEM	COLUMN 1	COLUMN 2	COLUMN 3 Set Fine (Includes Costs)
1.	Being the owner of an animal, allows it to trespass on private property	Section 1	
2	Being a person who harbours an animal, allows it to trespass on private property	Section 1	
PROPOSED FORMAT			

BY-LAW 12346: TITLE			
CITY OF	COLUMN 1	COLUMN 2	COLUMN 3 Set Fine (Includes Costs)
ITEM			
1.	Using land in a residential zone for parking a truck	Section 1	
2.	Permitting land in a residential zone to be used for parking a truck	Section 1	
3.	Using land in a residential zone for other than a permitted use, namely for the keeping of _____ (type of animals)	Section 3	
4.	Using land in a residential zone for other than a permitted use, namely for a business	Section 4	
PROPOSED FORMAT			

THE BUILDING CODE ACT

ITEM	COLUMN 1	COLUMN 2	COLUMN 3 Set Fine (Includes Costs)
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- |    |  |           |  |
|----|--|-----------|--|
| 1. | Constructing a building without a permit                                   | Section 1 |  |
| 2. | Causing a building to be constructed without a permit                      | Section 2 |  |
| 3. | Constructing a building not in accordance with approved plans              | Section 3 |  |
| 4. | Causing a building to be constructed not in accordance with approved plans | Section 4 |  |
| 5. | Failing to comply with an order dated _____ under section _____            | Section 5 |  |
| 6. | Failing to comply with an order dated _____ under section _____            | Section 5 |  |
| 7. | Failing to comply with an order dated _____ under section _____            | Section 5 |  |
| 8. | Failing to comply with an order dated _____ under section _____            | Section 5 |  |

PROPOSED FORMAT

MOVING OFFENCE BY-LAWS			
CITY OF	BY-LAW		
ITEM	COLUMN 1	COLUMN 2	COLUMN 3 Set Fine (Includes Costs)
1.	Prohibited left turn	Section 1	
2.	Prohibited "U" turn	Section 2	
3.	Prohibited right turn	Section 2	
PROPOSED FORMAT			

## APPENDIX II

SUGGESTED SET FINES  
(TO ACCOMPANY SHORT FORM OF WORDINGS)

By-Law No. 12345Suggested Set FineItem

1. Offence
2. Offence

By-Law No. 12346Item

1. Offence
2. Offence
3. Offence
4. Offence

The Building Code ActItem

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

The Ontario Water Resources ActItem

- 1.
- 2.
- 3.
- 4.

Moving Vehicle Offences (By-Laws)Item

- 1.
- 2.
- 3.

This bulletin was prepared in the:

**Municipal Administration Branch  
Ministry of Intergovernmental Affairs  
3rd Floor, Mowat Block  
Queen's Park  
Toronto, Ontario  
M7A 1C2**

**Tel. 416-965-3514**

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**Publications Centre  
880 Bay Street, 5th Floor  
Toronto, Ontario  
M7A 1N8**

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For additional information on this subject, get in touch with any of the field officers of the Local Government Division. They are located at these addresses.

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172 Dalhousie St.  
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